

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

JACK LEE ROSENBERRY,

Petitioner

v.

WARDEN EARL REITZ,

Respondent

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CIVIL NO. 3:CV-10-150

(Judge Conaboy)

FILED
SCRANTON

FEB 15 2012

PER
DEPUTY CLERK

MEMORANDUM
Background

This pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 was initiated by Jack Lee Rosenberry during his prior confinement at the Cumberland County Prison, Carlisle, Pennsylvania.¹ Named as Respondent is Warden Earl Reitz of the Cumberland County Prison. Service of the Petition was previously ordered.

Following a June 28, 2007 jury trial in the Cumberland County Court of Common Pleas Rosenberry was convicted of three (3) counts of indecent assault.² On February 8, 2008, Petitioner was sentenced to a nine (9) to twenty-three (23) month term of incarceration and a consecutive three (3) year period of probation.

¹ The Petitioner has been released from incarceration.

² It is noted that Petitioner was found not guilty of more serious related charges.

Petitioner's pending action claims entitlement to federal habeas corpus relief on the grounds that the trial court improperly impaired defense counsel's ability to attack the credibility of witnesses by denying access to relevant juvenile court and psychiatric records. See Doc. 1, ¶ 12. By Order dated January 27, 2012, a pre-hearing conference was scheduled in this matter for February 23, 2012. See Doc. 15.

On February 15, 2012, Petitioner filed a letter with this Court. See Doc. 18. His letter states in relevant part that "I Jack L. Rosenberry do not wish to pursue this matter." Id.

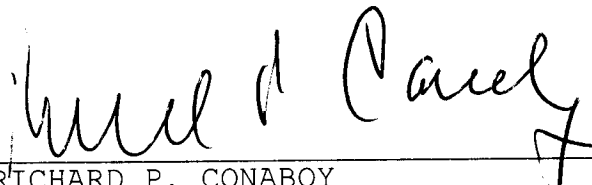
Under the standards announced in United States v. Miller, 197 F.3d 644 (3d Cir. 1999) and Mason v. Meyers, 208 F.3d 414 (3d Cir. 2000),³ a pro se litigant is allowed opportunity to voluntarily withdraw a federal habeas corpus petition.

Based upon an application of the standards announced in Miller and Mason to Rosenberry's announced intention to withdraw his instant action, his request for voluntary dismissal will be granted. The dismissal will be entered without prejudice.

In addition, the pre-hearing conference previously scheduled in this matter will be cancelled and Respondent's recently filed motion seeking leave to file a memorandum of law

³ Miller and Mason sought to prevent pro se litigants from unintentionally defaulting federal habeas corpus claims through failure to assert them in a single petition.

and attachments nunc pro tunc (Doc. 17) will be dismissed as moot. An appropriate Order will issue.



RICHARD P. CONABOY
United States District Judge


DATED: FEBRUARY , 2012